REMARKS

The Restriction Requirement

The Examiner has required restriction to one of the following Groups under 35 U.S.C. § 121:

I. Claim 18, drawn to compounds classified in class 546.

II. Claim 20 (excluding compounds encompassed by Claim 18), drawn to compounds classified in class 544, various subclasses depending on the species.

III. Claims 1-17, 19 and 21 (excluding compounds encompassed by Claim 18), drawn to compounds classified in class 544, various subclasses depending on the species.

IV. Claim 22, drawn to compositions of Claim 21, additionally comprising an additional therapeutic agent selected from an antibiotic, an anti-inflammatory agent, a matrix metalloprotease inhibitor, a lipoxygenase inhibitor, a cytokine antagonist, an immunosuppressant, an anti-cancer agent, an anti-viral agent, a cytokine, a growth factor, an immunomodulator, a prostaglandin , an anti-vascular hyperproliferation compound, or an agent which increases the susceptibility of bacterial organisms to antibiotics, classified in various classes and subclasses depending on the election of species. Applicants are further required to elect a single disclosed compound (of Claim 1) AND a single disclosed additional therapeutic agent useable together in a composition encompassed by Claim 22.

V. Claims 23-25 drawn to diagnostic methods classified in class 435, various subclasses depending on species election. Applicants are required to elect a single disclosed species useable in the diagnostic methods of Claims 23-25 from which further restriction may apply.

VI. Claims 26-29 drawn to methods of decreasing bacterial quantity using compounds and compositions formula I classified in Class 514, subclass 256 and 315. Applicants are required to elect a single disclosed species useable in Claims 26-29 from which further restriction may apply.

VII. Claims 30-31 drawn to multiple active ingredient methods of using compounds and composition of formula I with an additional step of using compounds and composition of formula I with an additional step of administering another therapeutic agent classified in class

513, various subclasses depending on the structure of the additional therapeutic agent. Applicants are required to elect a single disclosed therapeutic agent useable together for the instant method.

In response, applicants elect Group III, with traverse, for further prosecution in this application. This election is made expressly without waiver of applicants' rights to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or in other applications claiming benefit herefrom.

Applicants express their appreciation to Examiner Balls for the helpful phone discussion on October 6, 2006. As discussed further below, applicants agent and Examiner Balls agreed that species claim 20 in Group II was inadvertently omitted from the generic claims in Group III.

Applicants assert that Group II and therein claim 20 should have been included in Group III (claims 1-17, 19 and 21) because the compound species recited in claim 20 fall under formulae I, II-a, III, IIIa, IV, and V recited respectively in generic claims 1, 8, 9, 10, 12, and 17 and thus are linked to the species recited in claim 20.

Applicants point out that there are two criteria for restriction between patentably distinct inventions: 1) the inventions must be independent or distinct; and 2) there must be a serious burden on the examiner if restriction is required. See Manual of Patent Examining Procedure (MPEP) 803. The second element is not met here. The Examiner contends that each species in claim 20 is "drawn to compounds classified in class 544, and various subclasses depending on the species." In fact, the genus of formulae I, II-a, III, IIIa, IV, and V in claims 1, 8, 9, 10, 12, and 17 have at most only five radicals. Furthermore, all the compounds encompassed by the claims comprise an aminobenzimidazole urea or carbamate core linked to two other aryl or heteroaryl rings. Applicants assert that the well-defined genus of formulae I, II-a, III, IIIa, IV, and V, and all the compounds encompassed by claim 20, would not be an undue search burden. In fact, a search of the claimed subject matter in the corresponding PCT application conducted by the European Patent Office only identified five references of general interest and three references considered to be relevant to patentability.[1]

In addition, a restriction excluding the compound species in claim 20 would prevent applicants from properly claiming their invention. A restriction requirement that excludes these

1. See Cite No.'s B1-B2 and C1-C3 submitted with the Information Disclosure Statement filed February 16, 2005.

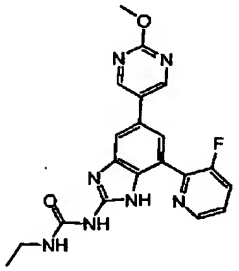
disclosed species would prevent applicants from claiming those aspects of their invention for species that are encompassed by the generic claims 1-17, 19 and 21.

Finally, applicant points out that claims 1-17, 19, and 21 are generic claims that link the species recited in claim 20. Thus, when any of these claims are found allowable, the restriction requirement to each of the remaining species must be withdrawn. See MPEP 809.

For these reasons, applicants respectfully request that the Examiner combine and examine claim 20 in Group II together with claims 1-17, 19 and 21 in Group III.

Election of Species

The Examiner has also requested an election of species. In response to the species election requirement, applicants provisionally elect compound I-105 (specification page 24) having the following structure:



I-105

Claims 1-7, 17, and 19-21 read on the elected species.

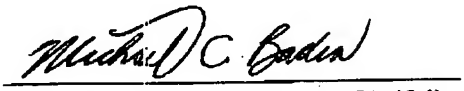
Pending allowance of claims 1-7, 17, and 19-21 applicants request the rejoinder of claim 22 (Group IV), claims 23-25 (Group V), claims 26-29 (Group VI), and claims 30-31 (Group VII) pursuant to MPEP §821.04.

In view of the above, applicants request that the Examiner examine claims 1-17, 19, 21 (Group I) and claim 20 (Group II) in this application. Applicants request favorable consideration and early allowance of the pending claims.

Conclusion

Applicants request that the Examiner enter the above amendments, consider the accompanying remarks, and allow the pending claims to pass to issue.

Respectfully submitted,



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